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Government prepares to amend FoI Act

By George Brandon

The Reagan Administration intends to present to Congress within the next two months "a comprehensive package" of amendments to the federal Freedom of Information Act.

In remarks prepared for presentation before a July 15 hearing of the Subcommittee of the Constitution of the Senate Judiciary Committee, Jonathan C. Rose, Assistant Attorney General in the Justice Department's Office of Legal Policy, said the department already has begun analyzing comments on the operation of the FoI Act solicited from Federal agencies by Attorney General William French Smith.

Rose said Justice would not comment on specific amendments currently before Congress in lieu of the Administration's intention to present its own package of amendments "within the next two months."

Pressing problems

Rose nevertheless said Justice believes there are "several pressing problems arising from the current structure and implementation of the act, including:

- Significant impairment of the investigatory abilities of criminal law enforcement agencies, such as the FBI and the Drug Enforcement Administration;
- Substantial impairment of the ability of national security intelligence agencies, such as the CIA and the National Security Agency, to gather confidential information;
- Commercial interests using the act to obtain information submitted to the government by other businesses "appears to have impaired the government's ability to collect needed information from businesses and may result in the unfair disclosure of confidential business information;
- Private litigants who misuse the act to circumvent judicial rules controlling the discovery process in lawsuits, particularly antitrust suits, create substantial and unjustified administrative burdens on government agencies and can disrupt an agency's primary functions;
- "The government's present inability under the act to collect the full costs of FoI requests . . . results in excessive and sometimes frivolous use of FoI . . . at substantial cost to the taxpayer."

First of three

Rose's testimony came during the first of three scheduled oversight hearings on the FoI Act described by Chairman Orrin G. Hatch (R-Utah) as aimed at restoring

functions."

Hatch is the author of two of the more than 20 amendments to the FoI Act already introduced in the current Congress. Between them, the two Hatch amendments, S.586 and S.587, would allow agencies to decline to copy and disclose information because it is available from another public source; impose a non-refundable fee payable in advance, before processing an information request; and limit requests under the act to American citizens.

The Hatch amendments also would bar disclosure of law enforcement investigatory records until 10 years after the conclusion of an investigation that doesn't result in a prosecution, and for even longer periods when investigations result in criminal convictions.

They would create new exemptions for rosters of law enforcement personnel, confidential handbooks used by law enforcement personnel, confidential handbooks used by law enforcement agencies and any information received in confidence from state, local or foreign governments.

Other bills

Other bills pending in the Senate and House would give the CIA and FBI almost blanket exemptions from disclosure under the FoI Act; amend the Privacy Act (HR 1049) to restrict disclosure of records containing names of individuals; prohibit disclosure of patient identities and other medical information by public and private hospitals receiving Medicare, Medicaid or other federal funds (H.R. 1059 and 1060); prohibit the Consumer Product Safety Commission from releasing information marked confidential by businesses that submitted the information; and permit businesses (S. 1247) to block disclosure of information in "reverse-FoI suits."

Robert L. Saloschin, former chairman of the Justice Department's Freedom of Information Committee, and the man Hatch said "is regarded as the government's leading expert on Freedom of Information law," told the Senate subcommittee that the current needs "substantial amendments in several areas."

When Congress last changed the act in 1974 with a series of amendments spelling out government's duty to respond to requests in a timely fashion, the focus was "to maximize FoI's benefits," Saloschin said. "Today, the primary concern is to minimize the detriments."

In his prepared remarks Rose told the

from private individuals," while 14% came from "business firms, especially law firms."

In the House, the Judiciary Subcommittee on Government Information and Individual Rights began three consecutive days of general oversight hearings on the FoI Act on Tuesday, hearing eight witnesses drawn from print and broadcast news organizations and actor Ed Asner, star of television's Lou Grant series.

Rep. Glenn English (D-Okla.), chairman of the subcommittee that gave birth to the FoI Act under the principle authorship of former Judiciary Committee chairman John E. Moss, had said at the outset that the hearings would not focus on particular legislation, although at least a half-dozen bills that would alter the act have been referred to the subcommittee.

Noting that this month marks the 15th anniversary since the FoI Act was passed by Congress in 1966, English said its underlying principles "have held up very well over time," but that "some of the law's procedures are in need of revision."

Bob Schieffer, CBS News national correspondent who testified for the Society of Professional Journalists, Sigma Delta Chi, addressed a criticism frequently employed by federal agency officials who find the FoI Act burdensome.

"If the society achieves no other purpose this morning," Schieffer said, "we would like to dispel the myth that reporters do not make much use of the act. Good reporters guard their sources and news-gathering techniques . . . and the statistics do not reflect the enormous amount of information received from the mere presence of the act on the books."

Schieffer said any Washington reporter can cite examples of agencies that "voluntarily disgorged information quickly at the mere mention of a possible FoI Act request."

Representing the American Newspaper Publishers Association, whose 1,400 member papers have about 90% of the nation's daily and Sunday circulation, and the National Newspaper Association, which has more than 5,000 weekly and small daily members, William Cox, city editor of the Louisville Courier-Journal,